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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/809,613	03/25/2004	Esmervaldo C. Enrique	PC-1671	7225
23717	7590	07/12/2004		
LAW OFFICES OF BRIAN S STEINBERGER 101 BREVARD AVENUE COCOA, FL 32922			EXAMINER	
			NELSON JR, MILTON	
			ART UNIT	PAPER NUMBER
			3636	

DATE MAILED: 07/12/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	10/809,613	ENRIQUE, ESMERALDO C.
Examiner	Art Unit	
Milton Nelson, Jr.	3636	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) Responsive to communication(s) filed on \_\_\_\_.
- 2a) This action is **FINAL**.                            2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_ is/are allowed.
- 6) Claim(s) 1-18 is/are rejected.
- 7) Claim(s) \_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
 Paper No(s)/Mail Date \_\_\_\_
- 4) Interview Summary (PTO-413)  
 Paper No(s)/Mail Date \_\_\_\_
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: \_\_\_\_

## DETAILED ACTION

### ***Information Disclosure Statement***

The information referred to in the information disclosure statement filed March 25, 2004 has been considered.

### ***Specification***

The disclosure is objected to because of the following informalities: The reference character "25" has been inconsistently assigned. Note lines 19 and 20 on page 9. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-14 and 18 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In lines 3, 4 and 6 of claim 1, it is unclear if "the seat" is intended to be the same feature as the previously set forth "seat portion". Similarly note claims 6 and 14. In claim 4, "the plurality of leg assemblies" lack proper antecedent basis. In claim 7, "the umbrella attachment" lacks proper antecedent basis.

In line 9 of claim 17, "the rotation" lacks proper antecedent basis. The other claims are indefinite since each depends from an indefinite claim.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-3, as best understood with the above cited indefiniteness, are rejected under 35 U.S.C. 102(b) as being anticipated by Talley (4317519). Note the seating device (12) with seating portion, cane handle and leg members (see Figures 1 and 2). Note that the cane handle has an ergonomic gripping surface (see curvature of the handle), and tripod configuration (three legs).

Claims 1-3, as best understood with the above cited indefiniteness, are rejected under 35 U.S.C. 102(b) as being anticipated by Combs (3266839). Note the seat portion (10), leg members (12, 13), one leg (13), cane handle (15), ergonomic gripping surface (curvature of the handle), and tripod (three legs).

Claims 1-3 and 6, as best understood with the above cited indefiniteness, are rejected under 35 U.S.C. 102(b) as being anticipated by Venge (1736893). Note the seat portion (5), leg members (1-3), one leg (3), cane handle (14-20), ergonomic

gripping surface (curvature of the handle), tripod (three legs), and removable attachment of the umbrella to the cane handle (wing bolt allows for removable).

Claims 17 and 19 are rejected under 35 U.S.C. 102(b) as being anticipated by Bushweller et al (5896880). Note the umbrella (16), rod member (lower portion of 12), and yoke (18). Also note that the clamp allows up to "approximately" 180 degrees of rotation to both the left and right sides of the yoke.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 4 and 5, as best understood with the above cited indefiniteness, are rejected under 35 U.S.C. 103(a) as being unpatentable over Talley (4317519) in view of Davis (4934638). The primary reference shows all claimed features of the instant invention with the exception of the plurality of leg assemblies being tubular (claim 4); and the plurality of leg assemblies being telescopic (claim 5). Note the discussion of Talley above.

Davis conventionally teaches configuring the plurality of leg members of a stool as tubular, telescopic legs. Note Figures 1 and 3.

Regarding claim 4, it would have been obvious to one having ordinary skill in the pertinent art to modify the primary reference in view of the teachings of the secondary reference by configuring the plurality of leg members in a tubular configuration, thereby reducing the weight of the assembly while maintaining assembly support integrity.

Regarding claim 5, it would have been further obvious to one having ordinary skill in the pertinent art to modify the primary reference in view of the teachings of the secondary reference by further configuring the plurality of leg members as telescopic, thereby enhancing selective height adjustment of the assembly.

Claims 4 and 5, as best understood with the above cited indefiniteness, are rejected under 35 U.S.C. 103(a) as being unpatentable over Combs (3266839) in view of Davis (4934638). The primary reference shows all claimed features of the instant invention with the exception of the plurality of leg assemblies being tubular (claim 4); and the plurality of leg assemblies being telescopic (claim 5). Note the discussion of Combs above.

Davis conventionally teaches configuring the plurality of leg members of a stool as tubular, telescopic legs. Note Figures 1 and 3.

Regarding claim 4, it would have been obvious to one having ordinary skill in the pertinent art to modify the primary reference in view of the teachings of the secondary reference by configuring the plurality of leg members in a tubular configuration, thereby reducing the weight of the assembly while maintaining assembly support integrity.

Regarding claim 5, it would have been further obvious to one having ordinary skill in the pertinent art to modify the primary reference in view of the teachings of the secondary reference by further configuring the plurality of leg members as telescopic, thereby enhancing selective height adjustment of the assembly.

Claims 4 and 5, as best understood with the above cited indefiniteness, are rejected under 35 U.S.C. 103(a) as being unpatentable over Venge (1736893) in view of Davis (4934638). The primary reference shows all claimed features of the instant invention with the exception of the plurality of leg assemblies being tubular (claim 4); and the plurality of leg assemblies being telescopic (claim 5). Note the discussion of Venge above.

Davis conventionally teaches configuring the plurality of leg members of a stool as tubular, telescopic legs. Note Figures 1 and 3.

Regarding claim 4, it would have been obvious to one having ordinary skill in the pertinent art to modify the primary reference in view of the teachings of the secondary reference by configuring the plurality of leg members in a tubular configuration, thereby reducing the weight of the assembly while maintaining assembly support integrity.

Regarding claim 5, it would have been further obvious to one having ordinary skill in the pertinent art to modify the primary reference in view of the teachings of the secondary reference by further configuring the plurality of leg members as telescopic, thereby enhancing selective height adjustment of the assembly.

Claims 12 and 13, as best understood with the above cited indefiniteness, are rejected under 35 U.S.C. 103(a) as being unpatentable over Talley (4317519) in view of Singley (5288131). The primary reference shows all claimed features of the instant invention with the exception of the seat portion is made of a solid, break-resistant material (claim 12), and the solid material being selected from the group consisting of polymeric resins, aluminum, and wood (claim 13). Note the discussion of Talley above.

Singley conventionally teaches configuring a seat portion of a chair made of a solid, break-resistant material (wood), wherein the solid material being selected from the group consisting of polymeric resins, aluminum, and wood.

Regarding claim 12, it would have been obvious to one having ordinary skill in the pertinent art to modify the primary reference in view of the teachings of the secondary reference by configuring the seat portion of a solid, break-resistant material (wood). The wood material is conventionally used in the pertinent art as a solid, and is durable material of construction. Use of wood provides a durable and readily available material that is solid and resistant to breaking.

Regarding claim 13, it would have been further obvious to provide the solid material as selected from the group consisting of polymeric resins, aluminum, and wood, as taught by Singley. Wood provides an attractive, durable and readily available construction material.

Claims 12 and 13, as best understood with the above cited indefiniteness, are rejected under 35 U.S.C. 103(a) as being unpatentable over Combs (3266839) in view

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of Singley (5288131). The primary reference shows all claimed features of the instant invention with the exception of the seat portion is made of a solid, break-resistant material (claim 12), and the solid material being selected from the group consisting of polymeric resins, aluminum, and wood (claim 13). Note the discussion of Combs above.

Singley conventionally teaches configuring a seat portion of a chair made of a solid, break-resistant material (wood), wherein the solid material being selected from the group consisting of polymeric resins, aluminum, and wood.

Regarding claim 12, it would have been obvious to one having ordinary skill in the pertinent art to modify the primary reference in view of the teachings of the secondary reference by configuring the seat portion of a solid, break-resistant material (wood). The wood material is conventionally used in the pertinent art as a solid, and is durable material of construction. Use of wood provides a durable and readily available material that is solid and resistant to breaking.

Regarding claim 13, it would have been further obvious to provide the solid material as selected from the group consisting of polymeric resins, aluminum, and wood, as taught by Singley. Wood provides an attractive, durable and readily available construction material.

Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Talley (4317519). Talley shows all claimed structural features of the instant invention. Talley

lacks only the specifically claimed method of converting steps. Note the discussion of Talley above.

It would have been obvious, if not inherent, to one having ordinary skill in the pertinent art to convert the assembly of Talley by the specifically claimed method of converting steps. Such provides an efficient manner in which to convert the assembly without any tools or assembly steps.

Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over Talley (4317519), as applied to claim 15, above, and further in view of Davis (4934638). Talley shows all structural features of the instant invention with the exception of an assembly for allowing adjustment of the length of the legs. Talley also lacks the specifically claimed method of converting steps. Note the discussion of Talley above.

Davis teaches providing the legs of a stool such that the length of the legs can be adjusted. Note the discussion of Davis (specifically its telescoping legs), above. It would have been obvious to one having ordinary skill in the pertinent art at the time of the instant invention to modify Talley in view of the teachings of Davis by configuring the legs such that can be telescopically adjusted. Such provides a selectively adjustable configuration for the length of the leg members.

It would have been obvious, if not inherent, to one having ordinary skill in the pertinent art to further convert the assembly of Talley by the specifically claimed method of converting steps, including adjusting the length of the legs. Such provides an efficient manner in which to convert the assembly without any tools or assembly steps.

Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Combs (3266839). Combs shows all claimed structural features of the instant invention. Combs lacks only the specifically claimed method of converting steps. Note the discussion of Combs above.

It would have been obvious, if not inherent, to one having ordinary skill in the pertinent art to convert the assembly of Combs by the specifically claimed method of converting steps. Such provides an efficient manner in which to convert the assembly without any tools or assembly steps.

Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over Combs (3266839), as applied to claim 15, above, and further in view of Davis (4934638). Combs shows all structural features of the instant invention with the exception of an assembly for allowing adjustment of the length of the legs. Combs also lacks the specifically claimed method of converting steps. Note the discussion of Combs above. Davis teaches providing the legs of a stool such that the length of the legs can be adjusted. Note the discussion of Davis (specifically its telescoping legs), above. It would have been obvious to one having ordinary skill in the pertinent art at the time of the instant invention to modify Combs in view of the teachings of Davis by configuring the legs such that can be telescopically adjusted. Such provides a selectively adjustable configuration for the length of the leg members.

It would have been obvious, if not inherent, to one having ordinary skill in the pertinent art to further convert the assembly of Combs by the specifically claimed method of converting steps, including adjusting the length of the legs. Such provides an efficient manner in which to convert the assembly without any tools or assembly steps.

Claim 18, as best understood with the above cited indefiniteness, is rejected under 35 U.S.C. 103(a) as being unpatentable over Bushweller et al (5896880) in view of UK (2045338). The primary reference shows all claimed features of the instant invention with the exception of the yoke being attached by clamping jaws that are tightened by rotation of a knob to compress a spring that moves the jaws towards one another. Note the discussion of Bushweller above.

UK (2045338) conventionally teaches configuring a yoke such that it is attached by clamping jaws (10, 14) that are tightened by rotation of a knob (17) to compress a spring (19) that moves the jaws towards one another.

It would have been obvious to one having ordinary skill in the pertinent art to modify the primary reference in view of the teachings of the secondary reference by substituting the yoke assembly of UK (2045338) for the yoke of the primary reference. Such a modification provides a yoke with enhanced capacity to hold and support the umbrella in a stable manner.

***Allowable Subject Matter***

Claims 7-11 and 14 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

***Conclusion***

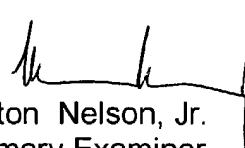
The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. A cane/seat is shown by each of Counihan et al (5411313), Brewer et al (3310340), and Shew (2798536). A cane/umbrella is shown by Crowley (387213).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Milton Nelson, Jr. whose telephone number is 7033082117. The examiner can normally be reached on Monday-Friday 5:30-3:00.

The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Milton Nelson, Jr.  
Primary Examiner  
Art Unit 3636

mn  
July 6, 2004